IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 29TH OCTOBER 2007 / 7TH KARTHIKA 1929

WP(C).No. 30752 of 2006(J)

PETITIONER:

M.M.PRADEEPAN, S/O.ARUMA,
AGED 35 YEARS, MOZHOTHU MEETHAL VEEDU,
CHEMBANATTU AMSOM, DESOM, KOZHIKODE.

BY ADV. SRI.P.C.SASIDHARAN

RESPONDENTS:

ASOK GEORGE, S/O.C.J.VARKEY,
AGED 50 YEARS, ALAKKALATHI VEEDU,
CHEMBANATTU AMSOM, DESOM, KOZHIKODE.

BY ADV. SRI.JOSY ANTONY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/10/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 30752/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE E.O.P NO. 16/2005 FILED BEFORE THE MUNSIFF COURT, PERAMBARA.

EXT.P2. COPY OF THE REPLY STATEMENT.

EXT.P3. COPY OF THE CHIEF AFFIDAVIT FILED BY THE PETITIONER.

EXT.P4. COPY OF THE PROOF AFFIDAVIT FILED BY THE RESPONDENT.

RESPONDENT'S EXHIBITS **NIL.**

True copy

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M.N. KRISHNAN, J.

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W.P.C. NO. 30752 OF 2006

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Dated this the 29th day of October, 2007.

J U D G M E N T

This writ petition is preferred seeking to call for the records in E.O.P.16/05 of the Munsiff Court, Perambra and to declare the trial of the Election Petition as invalid and for a further direction to the Munsiff not to proceed with the trial further. Though the respondent is served he has remained absent before this Court. A perusal of the election petition would reveal that the respondent has been declared elected by a majority of 16 votes. The contention is out of 17 votes 16 persons had already exercised their franchise in another ward/constituency and therefore 17 votes secured by the candidate who won the election is invalid and cannot be taken into consideration. The details of the double voting are given as 'I to XVI' in the election petition.

2. It is a settled principle that a voter can exercise his franchise only in one of the constituencies even if his

name appears in two constituencies. In order to open up the ballot box etc. the following matters have to be properly established namely,

(1) that a person's name figures in two constituencies or wards,

(2) the said person has exercised his franchise in these two constituencies.

(3) that the identification of the persons shown and who is alleged to have caused double voting is proved. So unless the Court is satisfied about these ingredients by evidence adduced in the matter, the Court cannot open the ballot box and proceed further to find out what has really transpired. Or in other words, it is rudimentary or elementary that these three factors have to be prima facie satisfied before proceeding with the case. For further proceeding, the Court has to refer at least in the proceeding paper about its satisfaction on these points and then direct the ballot box to be produced, opened or examination done for arriving at the said purpose. Suppose in this case without entering into that the Munsiff has marked some documents. I direct the Munsiff to consider those marking only as a

formal marking but before proceeding further the Munsiff should apply his mind to find out the ingredients which I have mentioned earlier and thereafter proceed with the matter in accordance with law. So, the learned Munsiff is now directed to proceed first to determine the points pointed out by me earlier, arrive at a prima facie conclusion and thereafter proceed in accordance with the provisions of law to find out whether there had been double voting as contended in the election petition. The evidence, even if, adduced at this stage shall be now made use of only for the purpose of deciding the point mentioned by me earlier and only in the next stage further evidence is to be let in to prove the case of double voting.

3. The documents which are already opened may be sealed and kept in safe custody till the next stage is arrived at.

With these observations, this writ petition is disposed of.

M.N. KRISHNAN, JUDGE.

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